

LITIGATION ROSTER

SPECIAL TAXES

SEPTEMBER 2012

Special Taxes
SEPTEMBER 2012

NEW CASES

Case Name

Court/Case Number

None

CLOSED CASES

Case Name

Court/Case Number

None

Please refer to the case roster for more detail regarding new and closed cases

Special Taxes
LITIGATION ROSTER
SEPTEMBER 2012

BRAR & CHAHAL INC. v. CA State Board of Equalization

Fresno County Superior Court Case No. 11CECG02688 DJK

Filed – 08/04/11

Plaintiffs' Counsel

Clark L. Rountree

Attorney at Law

BOE's Counsel

Steven J. Green

BOE Attorney

Wendy Vierra

Issue(s): The issue in this case is whether or not tobacco products were seized illegally under the authority of [Business & Professions Code section 22974 and 22974.3](#).

Audit/Tax Period: None

Amount: Unspecified

Status: On August 8, 2011, the judge denied Petitioner's ExParte Application for Stay of the Suspension of License to Sell Tobacco. Plaintiff also filed a Petition for Preliminary Writ of Mandate but has not served BOE. Awaiting proper service.

CA FARM BUREAU FEDERATION I, et al. v. CA State Water Resources Control Board, et al.

California Supreme Court Case No. S150518

Filed – 04/13/04

Sacramento Superior Court Case No. 04CS00473

Court of Appeal, Third Appellate District Case No. C050289

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: The California Supreme Court issued its decision on January 31, 2011, affirming the Court of Appeal's judgment holding that the fee statutes at issue are facially constitutional and reversing the Court of Appeal's determination that the statutes and their implementing regulations are unconstitutional as applied. The case is remanded to the Court of Appeal to remand to the trial court for proceedings consistent with the opinion. Petitions for Rehearing filed. On April 20, 2011, the Court denied the petitions for rehearing, and modified its opinion. Remittitur issued May 12, 2011. At the Status Conference on July 29, 2011, the judge ordered discovery in the Water Rights cases. As instructed by the Court at the July 29, 2011, case management conference, on September 30, 2011, the Attorney General's Office filed its Initial Joint Stipulation outlining the parties' briefing schedule. At the Status Conference on October 21, 2011, the judge granted BOE's motion to transfer the Palo Verde case to Sacramento, set a further case management conference for January 13, 2012, and set the case for a two-week trial on July 16, 2012. A Substitution of Attorney was filed for Petitioner City of Fresno on

November 10, 2011. A Notice of Entry of Dismissal was entered for Petitioner Stone Corral Irrigation District on November 17, 2011. Remand Trial has been changed to December 3, 2012.

CA FARM BUREAU FEDERATION II, et al. v. CA State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 05CS00538

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Filed – 01/13/05

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION III, et al. v. CA State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 06CS00651

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Filed – 04/26/06

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION IV, et al. v. CA State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 07CS00485

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

Filed – 02/11/08

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007; 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION V, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2009-80000231

Filed – 05/07/09

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick
Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2009-2009

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, Case No. S150518.

CA FARM BUREAU FEDERATION VI, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2011-80000880

Filed – 06/10/11

Plaintiffs' Counsel

Nancy McDonough
Attorney at Law

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2009-2010, 2010-2011

Amount: Unspecified

Status: On July 1, 2011, Plaintiff dismissed Jerome E. Horton as Chairperson of the Board of Equalization. This case is stayed pending the outcome of the stipulation pending the outcome of the consolidated cases – see *Northern California Water Association, et al. v. State Water Resources Control Board, et al.*

DIAGEO-GUINNESS USA, INC., et al. v. California State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00013031-CU-JR-GDS

Filed – 06/12/08

Court of Appeal, Third Appellate District No. C061227

California Supreme Court, Case No. S203691

Plaintiff's Counsel

Elizabeth Mann, Jeffrey N. Goldberg
McDermot, Will & Emery LLP

BOE's Counsel

Steven J. Green
BOE Attorney
Jeffrey Graybill

Issue(s): (1) Whether BOE has the authority to adopt new Alcoholic Beverage Tax Regulations [2558](#), [2559](#), [2559.1](#), [2559.3](#) and [2559.5](#) (“Regulations”) recently approved by the Office of Administrative Law on June 10, 2008; (2) whether the Regulations are consistent with governing law; (3) whether BOE is required to follow federal regulations in this area; (4) whether BOE failed to comply with the Administrative Procedures Act; and (5) whether the Regulations violate the Commerce Clause of the United States Constitution (Revenue and Taxation Code sections [32002](#), [32152](#), [32451](#) and Business and Professions Code sections [23004](#), [23005](#), [23006](#), [23007](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Judgment for SBE was entered February 19, 2009. Plaintiff's Notice of Appeal was filed on February 27, 2009.

Court of Appeal: Oral argument was held April 20, 2012. On April 30, 2012, the appellate court reversed the trial court's decision in favor of BOE and remanded the case to the trial court with directions to enter new orders granting Diageo-Guinness USA Inc.'s motion for summary judgment.

CA Supreme Court: Extended the time for granting review of the case through August 28, 2012. The Supreme Court's time to grant review of the decision of the court of appeal has expired. Also, the Supreme Court has denied the request of counsel for the County of Santa Clara to have the opinion of the Court of Appeal depublished.

GREYHOUND LINES, INC. v. California Board of Equalization

Sacramento Superior Court Case No. 07CS00054

Filed – 01/12/07

BOE's Counsel

Bob Asperger

BOE Attorney

Renee Carter

Plaintiff's Counsel

William D. Taylor, Eli R. Makus

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP

Issue(s): Whether consumption of diesel fuel used to operate air conditioning systems on buses was exempt from the diesel fuel tax ([Revenue and Taxation Code section 60501\(a\)\(4\)\(A\)](#); [Regulation 1432](#)).

Audit/Tax Period: 08/01/01-12/31/03; 01/01/04-06/30/05

Amount: \$295,583.04

Status: BOE's Answer to the Second Amended Complaint was filed February 1, 2010. On March 5, 2010, Greyhound agreed to remove its Demurrer to BOE's Answer to the Second Amended Complaint from the court's March 19, 2010 calendar. On September 23, 2011, Plaintiff Greyhound and Defendant BOE stipulated and agreed that the action against the defendant going to trial within five years of the date the action commenced, as stated in the code of [Civil Procedure section 583.310](#), would be extended for 24 months.

NORTHERN CA WATER ASSOCIATION I, et al. v. State Water Resources Control Board, et al.

California Superior Court Case No. S150518

Filed – 12/17/03

Sacramento Superior Court Case No. 03CS01776

Court of Appeal, Third Appellate District: 03CS01776

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: The California Supreme Court issued its decision on January 31, 2011, affirming the Court of Appeal's judgment holding that the fee statutes at issue are facially constitutional and reversing the Court of Appeal's determination that the statutes and their implementing regulations are unconstitutional as

applied. The case is remanded to the Court of Appeal to remand to the trial court for proceedings consistent with the opinion. Petitions for Rehearing filed. On April 20, 2011, the Court denied the petitions for rehearing, and modified its opinion. Remittitur issued May 12, 2011. At the Status Conference on July 29, 2011, the judge ordered discovery in the Water Rights cases. As instructed by the Court at the July 29, 2011, case management conference, on September 30, 2011, the Attorney General's Office filed its Initial Joint Stipulation outlining the parties' briefing schedule. A Status Conference is scheduled for October 21, 2011. A Substitution of Attorney was filed for Petitioner City of Fresno on November 10, 2011. A Notice of Entry of Dismissal was entered for Petitioner Stone Corral Irrigation District on November 17, 2011. Remand Trial has been changed to December 3, 2012.

NORTHERN CA WATER ASSOCIATION II, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 04CS01467

Filed – 10/29/04

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION III, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 05CS01488

Filed – 10/19/05

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION IV, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 06CS01517

Filed – 10/18/06

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION V, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2008-00003004-CU-WM-GDS

Filed – 02/07/08

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION VI, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2009-80000183

Filed – 03/05/09

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2008-2009

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION VII, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2010-80000461

Filed – 03/04/2010

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2009-2010

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION VIII, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2011- 80000828

Filed – 04/05/2011

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2010-2011

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

PALO VERDE IRRIGATION DISTRICT v. State Water Resources Control Board, et al.

Riverside Superior Court Case No. INC 043178

Filed – 05/28/04

Plaintiff's Counsel

David R. Saunders
Clayson, Mann, Yaeger & Hansen

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases (see *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.) On September 8, 2011, the Attorney General's Office filed a Case Management Statement advising the Palo Verde Court that related SWRCB water rights cases were calendared for a Case Management Conference on October 21, 2011, in Sacramento. At the Case Management Conference, the judge in Sacramento granted BOE's motion to transfer this case to Sacramento to be heard, but not consolidated, with the other water rights cases. Remand Trial has been changed to December 3, 2012.

SAHAND ENTERPRISES, INC. v. CA State Board of Equalization

Sacramento Superior Court Case No. 34-2011-00104904

Filed – 06/13/11

BOE's Counsel

Jane O'Donnell

BOE Attorney

Jeffrey Graybill

Plaintiffs' Counsel

Warren P. Felger

Felger & Associates

Issue(s): Whether the fees paid pursuant to the Underground Storage Tank Maintenance Fee Law were erroneously paid pursuant to Regulation 1213 ([Regulation 1213. Payment of Fee by Operator](#)).

Audit/Tax Period: None

Amount: \$37,072.53

Status: The BOE signed the Notice and Acknowledgment of Receipt on August 10, 2011, accepting service of the summons and complaint in the case. On September 9, 2011, the BOE filed its demurrer challenging the legal sufficiency of the complaint on the grounds that there are no allegations of an overpayment of underground storage tank fees. On February 17, 2012, Plaintiff filed an amended complaint on February 17, 2012. BOE had until March 23, 2012, to respond to the first Amended Complaint. On August 17, 2012, Taxpayer's counsel filed a motion to be relieved as counsel of record. At the hearing on September 28, 2012, the Court tentatively ruled that Taxpayer's counsel's motion to be relieved as counsel of record be "dropped" because counsel neither served the parties with nor lodged with the Court a proposed order as required by CRC Rule 3.1362(d) and (3). The Court stated that "defective" service deprives the Court of jurisdiction to consider the matter. The Court affirmed the tentative ruling on the same day because there was no request for oral argument. The hearing on BOE's demurrer to the plaintiff's First Amended Complaint, scheduled on August 28, 2012, has been continued to October 30, 2012.

SANTA CLARA, COUNTY OF, et al. v. State Board of Equalization of California

San Francisco Superior Court Case No. CPF-06-506789

Filed – 11/15/06

BOE's Counsel

Steven J. Green

BOE Attorney

Kiren Chohan

Plaintiffs' Counsel

Louise H. Renne, K. Scott Dickey

Renne, Sloan, Holtzman, Sakai LLP

Issue(s): Whether the BOE is under a mandatory duty to tax flavored malt beverages as distilled spirits under [Revenue and Taxation Code section 32451](#).

Audit/Tax Period: None

Amount: Unspecified

Status: On June 2, 2009, the court granted Third Party Diageo-Guinness USA, Inc.'s Motion to Enforce Stay. The court ordered that the existing stay order, entered June 18, 2007, shall remain in effect until a

Remittitur is filed and served by the clerk of the Court of Appeal in *Diageo-Guinness USA, Inc. v. California State Board of Equalization*, Case No. C061227, and that this stay order bars all discovery activity in the case. Oral argument was held April 20, 2012 in *Diageo-Guinness USA, Inc. v. California State Board of Equalization*, Case No. C061227, and the case was remanded to the trial court. Counsel for the plaintiffs had written to the Supreme Court in the Diageo case, asking to have that opinion depublished. The Court, on August 29, 2012, denied that request.

ZARTOSHT INC. v. California Board of Equalization

Sacramento Superior Court Case No. 34-2011-00106888

Plaintiffs' Counsel

Scott Souers

Attorney at Law

Filed – 07/15/11

BOE's Counsel

Steven J. Green

BOE Attorney

John Waid

Issue(s): The issue in this case is whether or not tobacco products were seized illegally under the authority of Business & Professions Code section 22974 ([Bus. & Prof. Code section 22974](#)).

Audit/Tax Period: None

Amount: \$788.42

Status: The Court has notified the Plaintiff that their Proofs of Service are incomplete and the Court will not file their documents. On August 26, 2011, the BOE filed a Motion to Reclassify the case as one of unlimited jurisdiction. The BOE also filed a Motion to Strike plaintiff's demand for a jury trial and its request for damages. At the September 29, 2011 hearing, the court granted both of BOE's motions, and ordered the plaintiff to file an Amended Complaint to be filed and served on or before October 11, 2011. The case has not been set for further proceedings at this time. Plaintiff filed its First Amended Complaint (Unlimited) Against Defendants for 1) Release or Recovery of Property That Was Erroneously or Illegally Seized on November 4, 2011. BOE filed its General Denial on December 1, 2011. A date for the Status Conference has not yet been set.

**SPECIAL TAXES
CLOSED CASES
LITIGATION ROSTER
SEPTEMBER 2012**

NONE

DISCLAIMER

Every attempt has been made to ensure the information contained herein is valid and accurate at the time of publication. However, the tax laws are complex and subject to change. If there is a conflict between the law and the information found, decisions will be made based on the law.

Links to information on sites not maintained by the Board of Equalization are provided only as a public service. The Board is not responsible for the content and accuracy of the information on those sites.